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HIGH COURT OF CHHATTISGARH AT BILASPUR

SINGLE BENCH : HON'BLE SHRI JAGDISH BHALLA, Ag. C.J.

Writ Petition No. 93 of 2004

Petitioner/ Plaintiff	:	Binod Bhai Patel, S/o. Kali Das Bhai Patel, R/o. Lal Bag, Rajnandgaon, Prop. M/s. P.V. Patel Bidi leaves merchant, Jay Stambh Chowk, Rajnandgaon.

Versus

Respondent/ Defendant	:	D.V.Venketa Rathan, S/o D. Venketasaiah, Prop. M/s. Vinayak Traders, Bidi leaves business, R/o. Satyanarayanpeth Hindupur, Distt. Anantpur, Andhra Pradesh.

Writ Petition under Article 227 of the Constitution of India

Present: Shri BP Gupta, counsel for the petitioner.
Shri Praveen Das, counsel for the respondent.

ORAL ORDER
(Passed on 19th July, 2007)

Heard learned counsel for the parties.

Question of law involved in this petition is --

> "Whether *proceeding of a suit can be stayed in a case similar suit has been finally decided.*"

The above question is to be examined on the background of following facts :

Plaintiff filed a suit for recovery of money in the Civil Court, Rajnandgaon. In the said Court, an application under Section 10 of the Code of Civil Procedure was filed for stay of the proceedings of the suit.

Section 10 of the Code of Civil Procedure provides as under :

> "10. Stay of suit – No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in

> the same or any other Court in (India) having jurisdiction to grant the relief claimed, or in any Court beyond the limits of (India) established or continued by (the Central Government) and having like jurisdiction, or before (the Supreme Court) Explanation – The pendency of a suit in a foreign Court does not preclude the Courts in (India) from trying a suit founded on the same cause of action."

From perusal of the above, it is crystal clear that the proceeding of a subsequent suit can be stayed by the Court concerned where it has been filed, if the earlier suit is pending. Admittedly, between the parties the earlier suit has already been decreed and copy of the decree was filed before the Court below. In spite of the same, proceedings were stayed by the Civil Court. Aggrieved by the same, petitioner has approached this Court.

I am of the considered opinion, that since the earlier suit has already been decreed, proceedings of the present suit can not be stayed under the provisions of Section 10 of the Code of Civil Procedure. Accordingly, the order passed by the First Civil Judge, Rajnandgaon is set aside and the writ petition stands allowed.

Sd/-
Ag. Chief Justice

padma